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International Court of Justice

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OFFICIAL TRANSCRIPT of the International Military Tribunal in the matter of : The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany, on 5 March 1946, 1010-1245, Lord Justice Lawrence, presiding.

THE PRESIDENT: I have an announcement to make.

The attention of the Tribunal has been drawn by Dr. Hans Marx, one of the German counsel appearing in this case for the defense, to an article which was published in the newspaper Berliner Zeitung for February 2, under the heading of "A Defense Counsel". The article, which I do not propose to read, criticizes Dr. Marx in the severest terms for an error of his cross examination of a witness, when he deputized for Dr. Babel on behalf of the SS. The article suggested that in asking the question he did, he was behaving most improperly, that he was expressing private and personal views under the guise of acting as counsel, and that his proper course was to remain silent in view of the character of the evidence.

The matter assumes a graver aspect still because the article goes on to threaten Dr. Marx with complete ostracism in the future and does so in language both violent and intimidating.

The Tribunal desires to say in the plainest language that such conduct cannot be tolerated. The right of any accused person to be represented by counsel is one of the most important elements in the administration of justice. Counsel is an officer of the Court and he must be permitted freely to make his defense without fear from threats or intimidations. In conformity with the express provisions of the charter, the Tribunal was at great pains to see that all the individual defendants and the named organizations should have the advantage of being represented by counsel, and the defense counsel have already shown the great service they are rendering in this trial, and their conduct in this regard should certainly not leave them open to reproach of any kind from any quarter.

The Tribunal itself is the sole judge of what is proper conduct in court and will be zealous to insure that the highest standard of professional conduct is maintained. Counsel, in discharge of their duties under the Charter, may count upon the fullest protection which it is in the power

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of the Tribunal to afford. In the present instance the Tribunal does not think that Dr. Marx in any way exceeded his professional duty.

The Tribunal regards the matter as one of such importance in its bearing on the due administration of justice that they have asked the Control Council for Germany to investigate the facts and to report to the Tribunal.

That is all.

Sir David, the first application is for the defendant Streicher. I call upon counsel for the Defendant Streicher.

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DR. MARX (Counsel for defendant Streicher): Mr. President, the defendant Stricher is indicted on two points: Point 1, that he was active in the planning and conspiracy of aggressive war; and 2, crimes against humanity.

As far as the first point is concerned, the defense believes that we do not have to bring proof because Streicher, during the whole of this proceeding, was never mentioned in a single document; and as to participation, so far as conferences with Hitler were concerned, he was not present and it cannot be proved that he was. With this line of thought I did not see fit to bring any proof.

So far as point two is concerned, first of all, I would like to call the wife of the defendant Streicher, Mrs. Adele Streicher; I wuld like to call her as a witness.

SIR DAVID MAXWELL-FYFE: I wonder if it would be convenient for me to indicate the views of the prosecution on these witnesses; there are only six of them. Then perhaps Dr. Marx could make his comments on my remarks.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: The Tribunal will see that there are six witnesses, and if it would take them in my order, it would indicate the point of the prosecution.

Number 3, Ernst Hiemer, was the editor-in-chief of Der Stuermer, and apparently the defendant's principal lieutenant.

Number 4, Wurzbacher, was an SA Brigade Leader in Nurnberg, and is alleged to be able to give evidence as to the speeches of the defendant.

Number 2, Herrwerth, was the defendant's chauffeur, and he speaks as to one point, really, namely, the defendant's annoyance at violence being used on the 10th of November, 1938.

And number 6, Dr. Strobel, who is a lawyer, speaks as to the same point, the disapproval expressed by the defendant in December 1938 as to the measures taken in November.

Then there are two members of the defendant's family: Frau Stricher, who was his secretary from 1940 to 1945; and his son, Lothar Streicher.

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The prosecution would have no objection to Herr Heimer as being the defendant's principal lieutenant, and on the suggestion made by Dr. Marx, that he can speak as to whatDr. Marx calls the defendant Stricher's basic attitude on the Jewish question. There are a number of matters on which he is said to be able to speak, to which the prosecution would object as irrelevant. However, the time for so doing is later.

Then, with regard to Herr Wurzbacher, he is said to have always been present at meetings where Stricher spoke, from the early days. To that also, the prosecution would not make objection, but they draw attention that in the early applications Herr Wurzbacher was said to be able to speak to the boycott in 1933 and the events of November 1938. Therefore, the prosecution respectfully remind the Tribunal that he can speak as to the events in 1938 and, in the view of the prosecution, it is not necessary to have oral testimony to repeat that point. They therefore suggest that with regard to Herr Herrwerth, the defendant's chauffeur, who really speaks as to one main point--that the defendant showed anger with regard to the events of 1938--an affidavit would be sufficient. Tbey suggest the same course with regard to Dr. Strobel, who is the attorney who is mentioned.

With regard to Frau Stricher, number 1, the Tribunal will see that it is said that Frau Stricher was the defendant's secretary during the period from May 1940 to May 1945. The gist of the case against this defendant is, of course, at a much earlier period, both before and immediately after the rise to power.

The prosecution suggest that the evidence which is desired from Frau Streicher is really a description of the life of the defendant during the war years, and they suggest that that, again, be covered by an affidavit.

That leaves Lieutenant Lothar Streicher, the eldest son of the defendant. If I may remind the Tribunal of how the matters mentioned in regard to him come into the case: In a report

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of the Goering Commission into the matters of aryanization, the question of corruption in regard to that, part of the report stated that this

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defendant paid a visit to three boys in prison and that certain disgusting and cruel actions took place. The prosecution, of course, submit that that is not really a matter of relevance to the charges against the defendant, but they realize that it is a highly prejudicial matter; it has been read and the bad effect has gone out of that evidence. Therefore, they feel that it must be a matter for the Tribunal, and the prosecution, having put in the report including that, ought not to take an objection, except to point out that it is not strictly relevant. However, if the Tribunal feel that this defendant ought to have the advantage of his son to counteract that account of very unpleasant matters, the prosecution would not take any objection, although they are bound to point out that it is not strictly relevant.

THE PRESIDENT: In the view of the prosecution, would an affidavit be suitable in that case?

SIR DAVID MAXWELL-FYFE: Certainly, that is the line the prosecution would suggest.

Therefore, if I may summarize, what I am suggesting is that the prosecution would make no objection to Herr Hiemer and Herr Wurzbacher giving oral evidence, and to affidavits from the other witnesses.

DR. MARX: I beg to differ in a few respects from Sir David Maxwell-Fyfe. The prosecution seems to be of the opinion that the testimony to be given by Mrs. Adele Streicher could not be of a special relevance. But I would like to state the opposite view, that this witness, who for five years--that is, from 1940 to 1945--was in the direct proximity of the defendant, handled the entire correspondence of the defendant and knows especially and particularly what relations Streicher had during the entire period of the war.

The defense is especially interested in showing and in proving that Streicher had no connection or relation to any of the important figures of the State or of the Party while he was interned on his estate. There was no exchange of letters nor an exchange of ideas with Hitler, nor with Himmler or or Kaltenbrunner, Heidrich, or whatever the names of the other important personalities may be.

Streicher was positively in a state of isolation and played no political role whatsoever; he had no authority whatsoever.

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As a consequence of that, as his counsel, I am very much interested in and stress the presence of this witness, because otherwise the most important interests of my client would be damaged. I, therefore, humbly suggest that Mrs. Streicher's presence before the Tribunal be granted, so that important questions may be put.

The same also applies to the witness Herrwerth. We cannot say that this witness can speak about unimportant matters or about insignificant incidents. On the other hand, we are concerned with proceedings or incidents of a significant nature. This man Herrwerth was present on the night of the 9th to the 10th of November, when the SA Group Leader von Obernitz reported to the then Gauleiter Streicher that demonstrations against the Jewish population were being planned. He knows, therefore, on the basis of his personal experience, what took place between these two men, what their conversation was, and he knows that Streicher was opposed to this demonstration.

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And on this basis that a demonstration of this nature was entirely out of order. Streicher took a definite stand against the will and the directive of the Fuehrer, as far as this demonstration against the Jewish population was concerned. There can be no doubt that we are concerned with an incident of great importance and significance. It is clear that if at that time Streicher who was bedridden at the time was visited in his room, Streicher if he took the stand that he did at that time, was without doubt as we have shown him to be, and I respectfully submit that Fritz Herrwerth be called as a witness before the Tribunal, so that he can be cross-examined by me and also by the Prosecution.

As far as the witness Heimer is concerned, the Prosecution and I seem to be in agreement. And as far as Wurzbacher is concerned, also. Wurzbacher is at present -- as I would like to remark at this point -- in the camp at Moosburg, and that is Camp No. 10.

As far as the witness Lothar Streicher is concerned, the defendant Streicher puts a special bearing on the point that this witness can show that a statement or claim made in the Goering Report is not true and that the Defendant Streicher at that time did not make any immoral gestures at that visit in the jail.

If the Prosecution would clarify or state that they would not stress this point and that this report will not be used as the theme of the speech, then I could agree to the point not to call this witness. If the opposite is the case, however, I consider it my duty to save the honor of my client and to insist on having this witness called before the Tribunal.

The same purpose cannot be served through an affidavit, and I humbly suggest that my request be granted.

SIR DAVID MAXWELL-FYFE: On that last point, My Lord, I have indicated from the Prosecution that that incident is not relevant to the charges against the Defendant Streicher. The Prosecution, of course, produced the report and I thought I had made it clear to the Tribunal that it is one of these collateral matters that do come in and the Prosecution for that reason would not oppose an affidavit from Lothar Streicher. But the main

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case of the Prosecution against this Defendant is on the stirring up and consistent incitement of the persecution of the Jews. I don't think I can put it further than that. But I hoped I had made clear that the incident was not one that was relevant upon any other issue. The report under discussion was on the The Aryanization of Jewish Properties, and that was a passage in the report. The report itself is relevant on persecution.

THE PRESIDENT: The Tribunal will consider that matter.

DR. MARX: May I make a few additional remarks, Mr. President?

This matter, which is to be brought into the testimony of Lothar Streicher, is a part of the report of Goering and it can hardly be treated separately from the rest of the context. For this Goering Report seems to have been made, according to the Defendant, by a man who wished to do him damage, a man from whom he had received many favors. Later, however, they became enemies and this Goering Commission which was originally concerned with other aims, was not concerned with doing a bad turn to the man who was now hated by Goering.

And it is not a matter of indifference that you say about a man that he had sadistic tendencies and make remarks like that about him in the presence of others and have those remarks circulated. For that reason specially, the Defendant is especially interested in having the untruth of this statement demonstrated in public and making the truth known.

I therefore humbly suggest that Lothar Streicher be heard before the High Tribunal.

As far as the last witness is concerned, the attorney, Strobel, I would be quite willing to agree with Sir David if I didn't have special misgivings in this direction also.

Through this attorney we hope to prove the following points: Some time -- perhaps three weeks after the early part of the 9th or 10th of November 1938 -- Streicher addressed a meeting of the Juridical Society at Nurnberg and in this public address before attorneys and legal men Streicher showed his attitude as far as the incidents of the 9th and 10th of November, 1938, were concerned, and showed distinctly that he was opposed to the demonstrations and

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to the burning and firing of synagogues. Attorney Strobel was at that time, as he said, surprised that Streicher in this public manner took an attitude and position against Hitler and did not wish to conceal the fact, and that as far as Obernitz was concerned he did not wish to participate or have anything to do with this demonstration and that he considered the whole demonstration and everything connected with it as a mistake. And the testimony of Strobel can be of greater importance than that of the chauffeur, Herrwerth, for as far as Herrwerth is concerned, the Prosecution can show and state the Defense that Herrwerth was an employee of the Defendant and may have his interests in helping a former employer; but this motive is not present in the case of the attorney, for Strobel in a writing -- a piece of writing which he addressed to the Tribunal -- showed his disinclination against the Defendant and only mentioned this incident in a parenthetical manner.

As far as Strobel is concerned, we can deal with an objective witness, especially in this case, whereas the witness Herrwerth might be said to be not entirely dis-interested. And I therefore humbly suggest that Attorney Strobel be summoned before the High Tribunal so that a direct questioning of this witness, by both Defense and Prosecution, can be had.

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THE PRESIDENT: That concludes your witnesses, does it not? Now you can turn to the documents. No documents? Very well, the Tribunal will consider your applications.

DR. MARX: I beg pardon, My Lord. Mr. President, may I have a word please? Up to now it has not been possible for me to gather all the documents which we need, for there are a number of newspaper articles which I would like to bring to the attention of the high Tribunal, and I ask for the possibility of submitting the list of documents later on. I will get in touch with the Prosecution beforehand as to which documents are to be deleted and which are to be of value.

THE PRESIDENT: Yes, Dr. Marx, the Tribunal will have no objection to your getting in touch with the Prosecution with reference to documents later on, but you must understand that no delay can be permitted.

I call upon the Counsel for the Defendant Funk.

SIR DAVID MAXWELL-FYFE: If Dr. Sauter would allow me, I would like to say that, with regard to these applications, there is so little between the applications and the views of the Prosecution that it might shorten matters if I were to indicate the views of the Prosecution, and then Dr. Sauter could add anything he has to say. I could be extremely short, but I don't want to supplant Dr. Sauter if he has any objection.

THE PRESIDENT: Would that meet with your view, Dr. Sauter?

DR. SAUTER (Counsel for Defendant Funk): That I put these requests orally and that the Prosecution will reply then?

THE PRESIDENT: I think Sir David meant that he should indicate any objections which he has first, and then you could explain your view.

DR. SAUTER: I quite agree, My Lord.

SIR DAVID MAXWELL-FYFE: If the Tribunal please, the witnesses fall into four groups. The first group is three witnesses from the Ministry of Economics, Nos. 1, 2 and 10 on the list. As I understand Dr. Sauter, he wishes to call No. 2, Herr Hayler, as an oral witness, and to have affidavits from the witnesses Landfried, No.1, and Kallus, No. 10. The Prosecution have no objection to this course, except that with regard to the witness

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Landfried they may have some observations to make on the form of the interrogatories, which could no doubt be settled with Dr. Sauter, and then put to the Tribunal for their approval. Secondly, they want to reserve the right to apply to put further cross-interrogatories. Apart from that, which I submi are really minor points, they agree with that suggestion.

The second group is two witnesses from the Reichsbank, No.5, Herr Puhl, and No. 7, Herr Schwedler. Again, as I understand Dr. Sauter, he wants an affidavit in the form of answers to questions. The Prosecution have no objection to that, only again they reserve the right to apply for cross-interrogatories, if necessary; if the answers take a certain form, they might have to apply to the Court that the witness be brought for cross-examination. They simply want to reserve that right, but, of course, they can't take their position until they have seen the form of the answers.

Then, the third group consists of one witness, who is Dr. Lammers, who has been called by most of the Defendants orally, and there is no objection to that, and the Prosecution suggests that Dr. Sauter will put his questions to Dr. Lammers when he is called by the other witnesses.

Then, the fourth group is a general one. There is Herr Oeser, who is an editor, No. 6; Herr Amann, No. 8; and No. 9, Herr Roesen; and lastly, No. 4, Frau Funk. As I understand it, with regard to all these witnesses, Dr. Sauter wishes either an affirmation or an affidavit. The Prosecution makes no objection to that, with the same understanding that they reserve their rights to put cross-interrogatories or to ask the Tribunal to summon any of them as witnesses, if any point emerges. Subject to the reservation of these points, there is nothing between us, because the result is, if I have understood it all correctly, that Dr. Sauter is asking for two oral witnesses and eight sets of interrogatories.

THE PRESIDENT: Sir David, don't you draw any distinction between an affidavit and interrogatories?

SIR DAVID MAXWELL-FYFE: Well, I do, certainly. But, My Lord, Dr.

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Sauter has shown that in most of the witnesses he has given the interrogatories which he is putting. Apart from Dr. Lammers, who, of course, will be dealt with orally, because he is being produced as a witness, and I understood that when Dr. Sauter says affidavit he means an affidavit in the form of answers to questions, such as those he has set out in the appendix.

THE PRESIDENT: Well, then, Sir David, so far as the Prosecution are concerned, they would take the line that you have suggested, meaning, by an affidavit, interrogatories and, if necessary cross-interrogatories?

SIR DAVID MAXWELL-FYFE: That is so.

THE PRESIDENT: Very well. Yes, Dr. Sauter?

DR. SAUTER: Gentlemen, I am quite in agreement with the suggestion of the Prosecution as far as particulars are concerned, and as far as the matter of the interrogatories is concerned, I will personally deal with the members of the Prosecution.

THE PRESIDENT: Just one moment. Dr. Sauter, perhaps you could tell us, dealing, for instance, with No. 6: You say there "I have in hand an affirmatic from this witness with a supplement thereto." Does that mean answers to interrogatories, or does that mean an affidavit, a statement. Have you got the passage?

DR. SAUTER: Yes. As far as No.6 is concerned, I have an affidavit from this witness, Albert Oeser, and this affidavit will be produced and submitted to the high Tribunal, as well as my document book. But I wish to point out at this time that I do have this affidavit at present, and I will submit it at a later date when I am presenting my full case.

THE PRESIDENT: Well, Sir David, that isn't quite the same as interrogatories. I don't know whether you have seen the affidavit. I mean, it may be that at a later stage you would want to cross-examine or to put cross-interrogatories to that witness.

SIR DAVID MAXWELL-FYFE: Yes, that would be so, your Honor. I must reserve the right, until I have seen the affidavit, to do that. The ones that are attached to Dr. Sauter's application are all in the interrogatory form, but where the document is in the form of a statement, the Prosecution would hav to reserve these rights. Really, one can't make any declaration until one has seen that.

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DR. SAUTER: Mr. President, this affidavit of the witness Oeser, No. 6, I will, of course, submit in ample time and submit it to the Prosecution so that the Prosecution may have ample time to draw their conclusions and to see whether they wish to cross-examine him. That, of course, I am taking for granted, sir.

THE PRESIDENT: Where is that particular witness? Where is he?

DR. SAUTER: That is witness No. 6, My Lord.

THE PRESIDENT: Yes, but where is the man? Where is he at the present moment? Is he in Nurnberg or where?

DR. SAUTER: No, I do not believe that he is here. He is at Schramberg in the State of Baden, in the Black Forest in the State of Baden, near the Rhine. That is quite a distance from Nurnberg. And beyond that, Mr. President, the points upon which he is to verify are relatively insignificant, that it would hardly pay to have the witness come personally to Nurnberg. I personally do not know the witness, but he was called to my attention through a friend and I was informed that he could give favorable testimony for Funk and in that way I obtained this affidavit which I will submit in due time.

SIR DAVID MAXWELL-FYFE: With regard to the documents, My Lord, the first one is a biography of the defendant Funk. The extracts were submitted as part of the Prosecution's case. I ask that Dr. Sauter intimate what passages he desires to use and then the Prosecution can make such objections or comments as may or may not be necessary.

The second request is, I think, the same as we had yesterday, namely for the record of the Dachau trial and of the evidence of the witness Dr. Blaha. The American Prosecutors will be pleased to show Dr. Sauter the report that they have of Dr. Blaha's evidence at that trial.

With regard to the speeches of the defendant Funk, there again if Dr. Sauter will intimate what they are and what he intends to use, the Prosecution will consider them. Prima facie they would be a relevant matter.

And with regard to No. 4, the copy of the newspaper with a report of the defendant's speeches, that again would prima facie be relevant and we shall look into it. It is very unlikely that there would be any objection, but we shall look into it, and, if necessary, deal with it

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when Dr. Sauter makes his presentation.

THE PRESIDENT: Has Dr. Sauter the newspaper?

DR. SAUTER: Mr. President, thenewspaper mentioned under No. 4, and also the speeches mentioned in No. 3 are in my possession. I will not use the entire text of the speeches in my brief.

THE PRESIDENT: Then you would be prepared to indicate to the Prosecution the passages in your Document 1, and the passages in 3 and 4, which you wanted to use so that they can have them translated.

DR. SAUTER: Yes, My Lord. I will just take a few pages, perhaps two or three, out of the book mentioned under Point 1, and I will also take those passages out of the speeches and out of the newspaper and I will include them in the document book and submit them to the Prosecution for purposes of translation. As far as the trial of Dachau is concerned, this request is taken care of by the position taken by the Prosecution yesterday regarding Frick and I can use the material mentioned yesterday.

THE PRESIDENT: Very well. Then I call upon counsel for Dr. Schacht.

DR. DIX (Counsel for Defendant Schacht): I am in the fortunate position to be able to tell the High Tribunal that I believe that Sir David and I can agree on the proof materials, including those which I will take back or those which I will submit. We have already reached an agreement and in order to facilitate matters, I would like to point out, first of all, which requests of my list are to be deleted, which I will limit, so that at the end we will have the balance of those I would like to have requested. I will delete request No. 5, for the testimony of Dr. Diehls. I found out yesterday that Dr. Diehls is being called as a witness for other members and the request was put in yesterday. If the High Tribunal will order the appearance of Diehls, I would like to reserve the right to question him if and when he is called, but I personally do not insist on his being summoned.

Then I would like to call to your attention No. 6, Colonel Gronau; No. 7, that is Mr. Van Scherpenberg; No. 8, State Secretary Carl Schmidt;

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No. 9, General Counsel Dr. Schniewind; No. 12, General Thomas of the Armament Staff; No. 11, Dr. Asmis Walter; No. 12, Dr. Franz Beuter; and No. 13, Dr. Berckemeyer. As far as all of these witnesses are concerned, I amquite content with an affidavit and I appreciate fully that these affidavits will be submitted by me to the Prosecution and I am also cognizant of the fact that the Prosecution will have the right to have these witnesses summoned for pruposes of cross-examination.

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Then we have a balance of the following witnesses which I ask that they be summoned personnlly; that is, witness No. 1, Dr. Gisevius; witness No. 2, Mrs. Struenck; witness No. 3, the former Reichs Bank Director Vocke; and witness No. 4, the former Director of the Reichs Bank Ernst Huelse. As far as these four witnesses are concerned, I must insist on their personal appearance and emphasize it very strongly. The defense of Schacht cannot be carried on successfully without their personal testimony. And I would like to put my reasons in each case. Testimony to be given by these witnesses is not in any manner cumulative. One witness, for instance, will know things which the other witness will not know. Witness No. 3, Vocke, and No. 4, Huelse, were the chief colleagues of Schacht and the Reichs Bank and in the International Bank at Basel. They, therefore, know of proceedings and connections which Schacht may not be able to recall in all their particulars and, therefore, the questioning of these witnesses cannot be carried on through an interrogatory because he cannot put the relevant questions. These witnesses must have the opportunity to give us a comprehensive statement and the knowing of particulars which Schacht does not know or cannot recall.

The same point applies for witness No. 1 and 2, Gisevius and Struenck, who knew of the riot plans of August 1938 and after that the conspiracy against Hitler which took place up until 1944.

Those are the points which I would like to have the witnesses bring out.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal --

THE PRESIDENT: The translation in English and one of the other translations is coming through together.

Yes, Sir David?

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, Dr. Dix and Professor Krans and my colleagues yesterday were good enough to indicate their proposals which Dr. Dix suggested to be put before the Tribunal, and the Prosecution felt that by limiting all the witnesses on the first point and point 2, Dr. Dix was making a reasonable suggestion. The Prosecution, of course, reserve all rights as to the relevancy of the various points set out as to these witnesses, but they felt that that, as I say, was a reasonable suggestion. On the Nos. 3 and 4, means that the defense are limiting all the witnesses, on the general economic course of conduct of the defendant, and again the Prosecution felt that that was a reasonable suggestion. With regard to the others, the Prosecution

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must, as I have said and Dr. Dix agreed, must reserve all rights by way of cross-interrogatories or of asking that the witness should be summoned, but the Prosecution felt that they could only be in a position really to decide what their rights and cause should be when they had seen the affidavits that were put in. That is the reasoning of the Prosecution in the matter.

THE PRESIDENT: As to documents, Dr. Dix?

DR. DIX: Regarding the documents, I would like to remark generally that when I mention books or speeches, such as are pointed out in No. 2, I do not wish the Court to assume that I intend to present large extracts before the Tribunal. We will only be concerned with very short quotations and these quotations will be --

THE PRESIDENT: The best course would be for us to adjour now and then this mechanical defect will be remedied.

(A short recess was taken)

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THE PRESIDENT: Just one moment, Dr. Dix. I have one or two announcements to make. In the first place, the application which has been made on behalf of the defendants for a separate trial of the organizations named under Articles 9 and 10 of the Charter, is denied.

Secondly, with reference to the application made on behalf of counsel for the Defendant Bormann, the Tribunal have considered that the application dated February 23, 1946, by Dr. Bergold, counsel for the Defendant Bormann, in which he asks that Bormann's case should be heard last, at the end of the case of all the other defendants, the Tribunal have decided to grant this application.

The Tribunal also ruled that the hearing of Dr. Bergold's applications, on behalf of Bormann, for witnesses and documents, in accordance with Article 24-D, shall not take place at the present time when the Tribunal are hearing the applications of all the other defendants, but at a later date to be fixed within the next three weeks.

Thirdly, with reference to the business of the Tribunal, the Tribunal will sit in closed session after the conclusion of the applications on behalf of the four defendants who are being heard today. Tomorrow, the Tribunal will continue the applications on behalf of the next four defendants; and on Thursday, the Tribunal will hear the case on behalf of the Defendant Goering.

Yes, Dr. Dix.

DR. DIX (Counsel for Schacht): Before the recess, I was on the point of telling the Tribunal, under No. 2 of the list of documents, that these extracts from books and addresses are limited to very short citations; that these documents having been made accessible by the prosecution, that should be enough on the question of No. 2.

As far as No. 1 is concerned, extracts from documents already submitted by the prosecution, I hardly need expand on all the examples here. I should like to mention one, however, by way of example; for instance, the report of Ambassador Bullitt to the Secretary of State in Washington, in which the prosecution read the latter, namely, that part which was interesting to it. Regarding this, I should like to reserve the right to read the first part which is concerned with Schacht's peaceful attitude on his political influence on Hitler. It is this part which is interesting to the defense.

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I now turn to No. 3, under sub-heading (a), memorandum of Dr. Schacht, of May 3, 1935, to Hitler, regarding the legal protection of the Jews, the distribution of the Gestapo. Here I should like to express the wish to the prosecution that so far as is possible, it should take care of this second document which has not been introduced. It is not Document 1168-PS, but when it was submitted -- I should like to ask that this document be procured, as I heard yesterday that it has not yet been found, but perhaps Colonel Gurfien, who is most certainly at home now, could help us in this matter. This document is immensely important to us because there is here a question in these two documents of an entire memorandum of Schacht's, which has to be submitted and evaluated in its entirety.

Then there is a letter from Dr. Schacht to General Feldmarschall von Blomberg concerning the limitation of armaments. I believe that the relevancy of this document is obvious.

Something should also be said in regard to sub-heading (c). That is a memorandum of Hitler regarding the Four Year Plan of August 1936. In this memorandum, Hitler makes the most strenuous sort of accusations against Schacht, including that of sabotage. This memorandum of Hitler's is of infinitive importance to us. Contrary to what stands in the list, I am not in a position to provide a desirable copy of this memorandum which, under certain circumstances, could take the place of the submission of the original. What I have is an extract which, as such, is in no way reliable enough to be submitted to the Tribunal in evidence. We want to be certain as to the contents of this memorandum and this we must do; then we must have the original. It was in the Lager Dustbin, in the town of Taunus, and I repeat my request of the prosecution to assist us in the procuring of this original.

Then there is a letter of Dr. Schacht to Goering, of November 1942, his answer to Goering. Goering's statement was that he should be dismissed because of defeatism. More precisely, the consequence of this letter was Schacht's dismissal because of defeatism and, furthermore, as a consequence of this letter, Goering expelled him from the Prussian State Council. Schacht saw this letter the last time in the hands of Herr von Schlabrendorf, who was an assistant to General Donovan, but is no longer here. Where he is now, Schlabrendorf, namely, I don't know. That could also be of assistance to us,

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and the prosecution could be of help to us.

Under (e), a telegram from Goering to Schacht, January 1943, in which Goering expelled the Defendant Schacht from the Prussian State Council,

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Regarding Letter F, the Russian application, it would be a help to us in getting our hands on this document. These are various notes, of written soliloquys and letters, and what not, found in Schacht's estate in Guehlen, near Lindow in Mark Brandenburg; it was when the Russians occupied that territory. So far as we have heard, the documents were taken in custody by th Russian troops. I should like the Russian delegation to do its best to provide us with these documents.

The documents under No. 4 are already in our possession. I hardly need list them in detail. They are to be found in our document book and hereafter the prosecution will have an opportunity to take an attitude towards them regarding their relevancy. That is all I have to say regarding the documents I wish to submit.

SIR DAVID MAXWELL-FYFE: With the approval of the Tribunal I shall consign the very remarks I have to make to paragraph 3 of Dr. Dix memorandum. With regard to the document for which Dr. Dix request, it is not yet procured. I have asked my colleagues to make inquiries, but at the moment they can find certain of these documents, although a search has been made. For example, No. 2, the note handed to Hitler on the same day is document No. 1168-PS. Mr. Dodd tells me that an exhaustive search was made in the American Delegation two months ago, and they are convinced that that document is not in their possession, and, the same applies to No. 4, by the Soviet Party.

THE PRESIDENT: Who was the interrogator, Judge Gurfein?

SIR DAVID MAXWELL-FYFE: Colonel Gurfein is the one that started the American prosecution who would conduct the interrogations at the earlier stage.

THE PRESIDENT: Where is he now?

SIR DAVID MAXWELL-FYFE: New York. That appearance has been brought in mind in the usual interrogations. If the document is used it is very carefully referred to, and the American Delegation informs me that they took that line of search, and had that in mind, and that they have not been able to find it. Similarly, in regard to No. 4, the Soviet Colleagues told me that they have no trace of the documents there mentioned.

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THE PRESIDENT: You mean there is no reference to that document in the interrogation conducted by Judge Gurfein?

SIR DAVID MAXWELL-FYFE: That is so, yes. They are unable to find any reference, I am told, being through the interrogation.

THE PRESIDENT: Have you any knowledge of any communication that has been sent to Judge Gurfein?

SIR DAVID MAXWELL-FYFE: I am not sure he had gone when the search of two months ago was made. I am sure that the American Delegation will look into that. What I was going to say in regard to No. E, my Soviet Colleagues inform me that no trace of these documents has been established by the Russian authorities. With regard to these, the prosecution would like some further time and they will make further inquiries, and then they will report to Dr. Dix and to the general delegation if anything can be done. With regard to the other documents, the ones which are referred to by Dr. Dix, on the many extracts, is one which entirely suits the prosecution if it suits the Tribunal.

THE PRESIDENT: I call on counsel for the defendant Doenitz.

DR. OTTO KRANZBUEHLER: Dr. Kranzbuehler, counsel for the defendant Doenitz. I should like to call the following witnesses: First, is Admiralrichter Kurt Eckhardt. He accounts for it as representative of the judge advocate. He should make testimony regarding the policies that were at the basis of the German U-Boat policy. This testimony is relevant in connection with the document submitted by the prosecution according to which th U-boat war was conducted without regard for International law. Secondly --

SIR DAVID MAXWELL-FYFE: Again it might help Dr. Kranzbuehler and the Tribunal, if I indicated the view of the prosecution to consider that No. 1, Admiral Eckhardt, and No. 2, Rear Admiral Wagner, and No. 4 Rear Admiral Godt, should not be subject of objections, they don't make objections to these three. With regard to Commander Hessler, No. 3, it seems to the prosecution that he was rarely accumulative of Rear Admiral Godt, as he ceased to be a U-boat Commander at the end of 1941, before the mass of material orders were issued. That is really the onepoint; as I said, we raise no objections to the other three. With regard to the second portion of the interrogatories, the interrogatories of Mr. Messersmith had been granted. With regard to the

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next three, Rear Admiral Kreisch, and Captain Rossing, and Commander Suhren, these were granted on 14 February, and a slight error crept into the prosecution's action which was purely mechanical; that the prosecution replied they did not object in principle, and did not wish to file cross interrogatories; they objected to two on the questions to be addressed to Commander Suhren, Nos. 7 and 8. It was indicated the same objection to the same questions should be made with regard to the other two. That it appears on one document as only relating to Commander Suhren, and on general principle there is no objection; with regard to No. 5, that has been done.

THE PRESIDENT: Well, Sir David, have those mistakes been rectified, in reference to 2 and 3?

SIR DAVID MAXWELL-FYFE: I am not quite sure. I want to mention that same objection to narrow the issues of this objection to two of the interrogatories, and in connection to all three sets of interrogatories, I don't think this has been before the Tribunal so far as I know.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: And with regard to Captain Eck, that evidence has been taken on the commission, and so there is no objection, and, finally, with regard to Admiral Nimitz, the prosecution do object to that application; that is a new application, and if the Tribunal will look at the grounds, they have, that from the United States the submarines attacked all ships departing from United States, and Allied vessels without warning, and that the United States submarines attacked all Japanese ships without warning, at the latest during that time when it should be surmised that Japanese ships would resist being taken as a prize. And third, that United States submarines did not assist ship-ridden people in "sub" waters where the submarine would be endangering herself by such assistance. The reason which Dr. Kranzbuehler gives is that we have not testimony to prove that the United States Admiralty made the same strategic and legal considerations in carrying out this submarine warfare. In the submission of the prosecution this is irrelevant. It does not follow that even this course had been taken by the United States. That they followed the same legal considerations might have

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been done as retaliation, and if so, the question whether the United States broke the laws and usages of war is quite irrelevant; as the question before the Tribunal is whether the German High Command read the laws, the admiralty laws, which merely raise the old problem of the evidence where directed to choose the proper argument, which this prosecution has always submitted throughout this trial as irrelevant.

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DR. KRANZBUEHLER: I shall limit my comments to those points to which Sir David has raised objections.

First of all, Number Three of the witnesses, Fregattenkapitaen Hessler, I do not consider his testimony to be cumulative. He is to testify first of all, when Order 154, which was submitted by the Prosecution, was no longer in force. This testimony is important because the Prosecution is of the opinion that the Order of September, 1942, did not have to be issued at all, but that it would have been enough to rely for behavior in each such matter on Order 154, the old order. Hessler is to testify that Order 154 was no longer in force at that time.

Moreover, Captain Hessler was that officer in the staff of the BDU who from 1941 on instructed all U-boat commanders on the orders that were issued, particularly on the orders regarding treatment of shipwrecked persons.

For that reason, he is, in my opinion, indispensable in regard to the testimony of the witness Moehle.

I now go over to Numbers Two, Three and Four: Admiral Kreisch, Captain Roesing, and the Captain of the Fregatte Suhren.

I believe that the objections of the Prosecution to two of the questions I have asked in my interrogatory can only then be answered when the answers to these questions are on hand. I do not know just what these objections are. I consequently do not know what reasons are given for them.

THE PRESIDENT: Has the Tribunal got the interrogatories and the objections of the Prosecution to Number Four?

DR. KRANZBUEHLER: So far the Tribunal has received from me only the interrogatory.

THE PRESIDENT: Have the Prosecution given us their objection to one question, which I understand was an objection that was made to the interrogatories put to Suhren, which should have been an objection to a particular question on the other two as well.

SIR DAVID MAXWELL-FYFE: Yes. It is very short. I will indicate, if Dr. Kranzbuehler will allow me, the two questions were: "Is it known to you that in September 1942 German submarines saved shipwrecked people after torpedoing the British steamer 'Laconia' and while doing so were bombed by

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an Allied plane?"

Number 8: "Do you know whether this incident was the reason for issuihg an order by the commanding officer of the submarines, BDU, in which assistance at the risk of endangering your own boat was prohibited and was declared irreconcilable with the laws of sea warfare?"

The objections were -- I will read them out: "Question 7. Objection is entered on the ground that this question is unnecessary and the facts are admitted."

"Question 8: Objection entered. It is not seen how the witness could possibly know the reason for the orders from the defendant Doenitz."

These are the objections that were made.

THE PRESIDENT: Yes.

DR. KRANZBUEHLER: May I make a statement regarding this? I believe that the officers named have some knowledge of the reason for the orders that they received from the Commander-in-Chief and can give testimony on that subject. For this reason: In the U-Boat arm it was generally know what was the reason for the order of September 1942, and while the commanders of the submarines in various theaters of war sometimes listened to the telegraphic communications in the course of the "Laconia" incident, such telegraphic communications were made and were listened to. That is all.

I now turn to the motion regarding interrogatories regarding Admiral Nimitz. The Prosecution has an entirely different attitude from that which is the basis of my application. I do not by any means wish to prove or even to assert that the American Admiralty in its U-Boat war against Japan broke international law. On the contrary, I am of the opinion that it acted strictly within the limit of international law. In the sea war of the United States against Japan, it was a question of precisely the same problems that confronted Germany in its sea warfare against England, to wit, the extent and the application of the London Submarine Agreement of 1930. The United States and Japan were also signatories to this agreement.

It is my proposition that because of the order to merchant vessels to resist, the London Agreement is no longer applicable to such merchant vessels. It is also not applicable in regions that had been declared war zones in which a general warning has been issued to all vessels, and where an

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individual warning to the individual ship is no longer necessary.

Through the interrogatory to Admiral Nimitz, I should like to establish that the American Admiralty in its practical understanding of the London Agreement, behaved in exactly the same way as the German Admiralty, and I should like to regard this as proof that the German behavior in sea warfare was perfectly legal.

The same is true of German behavior toward shipwrecked persons where the submarine would endanger itself by undertaking rescue measures.

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THE PRESIDENT: Yes, Dr. Kranzbuehler.

DR. KRANZBUEHLER: I now turn to the documents.

THE PRESIDENT: If you are departing from Admiral Nimitz I should like to ask a question of Sir David.

SIR DAVID MAXWELL-FYFE: If My Lordship pleases.

THE PRESIDENT: Sir David, I understood you to submit that these questions to Admiral Nimitz were entirely irrelevant?

SIR DAVID MAXWELL-FYFE: Yes.

THE PRESIDENT: Would it make any difference to your submission whether the German Navy had attacked merchant ships without warning in the first instance in the beginning of their war against England?

SIR DAVID MAXWELL-FYFE: Well, that of course would be a clearer breach of the treaty as at that time there was no question of armament, so faras I am aware, and there was certainly no question that the German submarines thought that they were attacking armed vessels who were really ships of war. Then of course one comes to the position which the prosecution developed in evidence that the German Navy, having indulged in thebeginning in that form of submarine warfare, the position changed and armament had to be inserted into the British ships. In my submission it would make a difference even if one takes the argument as Dr. Kranzbuehlerhas put it now, his saying that he is not alleging breaches of the laws and usages of war, but on his prior terms in the London agreement that merchant ships that were armed could be attacked. It really becomes a very difficult matter if one is to construe these treaties by a s ort of general investigation of the interpretation by various commanders. Within the point that Your Lordship put to me there is that very clear point which appears in our documents that the arming of merchant ships was the result of the attacks without warning which took place in the first months of the war.

THE PRESIDENT: But would you say that these questions to Admiral Nimitz are irrelevant because the United States came into the war in November 1941 when the war between -- the sea warfare between -- Germany and England had developed to that stage, when attacks were being made without warning?

SIR DAVID MAXWELL-FYFE: That is so, My Lord. That is what I was saying. I am very grateful to Your Lordship for clarifying the argument that I wanted to make.

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THE PRESIDENT: Is that clear to you, Dr. Kranzbuehler? The argument which I understood Sir David as putting forward with reference to these interrogatories is that they are truly irrelevant because of the date at which the United States came into the war, a date when the sea war between England and Germany had, for reasons which must be investigated, arrived at the stage that submarines were attacking merchant vessels without warning, and merchant vessels were defending themselves against those attacks.

DR. KRANZBUEHLER: Yes, Mr. President. It is however my opinion that the relationship that developed between Germany and England in their sea warfare can not be used as foundation for the measures that were carried on between the United States and Japan in their sea warfare, because in the latter it was an entirely different theatre of war in which German forces did not operate. In my opinion, therefore, the rules of sea warfare toward the East Asian theatre of war were answered perfectly in their own conditions and should not be derived from their conditions in the European theatre of war.

THE COURT: Then the Tribunal will consider those arguments.

THE TRIBUNAL (Mr. Biddle): How can what any navy did show the proper construction of a law? It may show what a particular admiral thought about it, but how are we interested in knowing what one admiral or another admiral thought about the law? Isn't that for us to decide? How is that any evidence? Isn't that your point, Sir David?

SIR DAVID MAXWELL-FYFE: Yes.

MR. BIDDLE: How does that really throw any light on the meaning of a law?

DR. KRANZBUEHLER: I believe that the principles, according to which sea warfare is conducted, do not originate in any one admiral, but that because of their enormous importance are great measures; that is to say, measures taken by the government. But it is recognized international law that the sources of international law are not only treaties but are also acts of governments. I should like to point out for example that Justice Jackson in his first report to President Truman specifically emphasized the fact that international law is furthered by acts of governments even if the London agreement of 1930 did not from the very beginning have the significance of accepting merchant vessels who had orders to resist; then acts of governments that were taken by all governments in this direction would have been of such a sort to create new international law in this matter. I am subsequently of the opinion that the attitude of the United States, as one of the greatest sea powers, in this matter

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is definitive in the correct interpretation of the London Agreement, and there it is also of decisive importance in regard to the legality of Germany's behaviour.

MR. BIDDLE: Do you claim that the London Agreement is ambiguous?

DR. KRANZBUEHLER: Yes.

MR. BIDDLE: What words in the London Agreement are ambiguous?

DR. KRANZBUEHLER: The concept "merchant vessels."

MR. BIDDLE: You haven't got the citation there, have you?

DR. KRANZBUEHLER: Which is that?

MR. BIDDLE: The phrase in the London Agreement which you claim is ambiguous.

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DR. KRANZBUEHLER: I do not have it here, but I can report it pretty precisely. It is stated that submarines in their behavior toward merchant vessels also are to observe the same rules as surface ships would.

I shall later submit proof that the concept "merchant vessel" even in the conference of Washington in 1922, was called ambiguous, and that also literature on international law after that date has emphasized again and again that this concept is ambiguous.

MR. BIDDLE: Dr. Kranzbuehler, you want Admiral Nimitz to give us his opinion of his construction of the treaty, do you not? Isn't that the purpose of these interrogatories?

DR. KRANZBUEHLER: No, I do not want to hear Admiral Nimitz's opinion, but I should like to hear of the methods employed by the United States in their warfare against Japan.

THE PRESIDENT: The Tribunal will consider the arguments you addressed, Dr. Kranzbuehler.

DR. KRANZBUEHLER: I now turn to the documents. As I have just heard from Sir David, there are no objections on the part of the prosecution. I do not know whether I need further justify my reasons for submitting the individual documents. Do I have to submit such reasons now?

First of all, as to the war diaries and the standing war orders of the Admiralty and the commanders of submarines, they have already been submitted, and the Prosecution does not object.

Under Number three I ask to be able to use the "British Confidential Fleet Orders" and "Admiralty Merchant Shipping Instructions" of the British Admiralty --

SIR DAVID MAXWELL-FYFE: My Lord, this matter came up before the Tribunal in closed session on an application from Dr. Kranzbuehler. I haven't heard definitely from the British Admiralty whether they agreed to do this, but I have asked Dr. Kranzbuehler if he will leave this matter over for ten days in the hope that we may be able to meet him. If Dr. Kranzbuehler will not press it in ten days I shall, of course, let him know as soon as I have any definite information.

THE COURT: Yes.

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DR. KRANZBUEHLER: I am agreed to that. Under number four I announce my intention of submitting a number of declarations and letters I have received from German U-Boat commanders and officers, in part through the agency of the Secretary General. These declarations contain details on the address delivered by the commander-in-chief in Gotenhafen on which the witness Heisig testified, H-e-i-s-i-g; the order concerning instructions regarding U-Boat commanders by the witness Moehle; and the order regarding the behavior towards shipwrecked persons. So far as I know the prosecution has no objection.

THE PRESIDENT: Have you got any objection, Sir David?

SIR DAVID MAXWELL-FYFE: My Lord, many of these matters may have to be considered when the actual document is put before us. There are no class objections to them.

DR. KRANZBUEHLER: I should like to point out that I must probably bring further documents later, after I have spoken to Admiral Eckhardt. I may perhaps then once more request the Tribunal to allow me to call this witness, who is very important to the entire defense, and to hear him as soon as possible.

THE PRESIDENT: Yes, I think the Tribunal would grant that subject, of course, to there being no delay regarding further applications.

DR. KRANZBUEHLER: Yes.

THE PRESIDENT: The Tribunal will now adjourn.

(The Tribunal adjourned until 6 March 1946 at 1000 hours).